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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ADAM FRANCISCO CAPPELLO,

Defendant and Appellant.

D056838

(Super. Ct. No.  
SCD223160/MH104622)

APPEAL from a judgment of the Superior Court of San Diego County, Frederick Maguire, Judge. Affirmed.

I.

INTRODUCTION

The trial court found defendant Adam Francisco Cappello to be mentally incompetent to stand trial and ordered him committed to Patton State Hospital for a maximum period of three years. The trial court also authorized the treating facility to

involuntarily administer antipsychotic medication to Cappello when prescribed by his treating psychiatrist.

On appeal, Cappello challenges the sufficiency of the evidence to support the trial court's findings with respect to the involuntary administration of antipsychotic medication. We conclude that there is substantial evidence supporting the trial court's underlying findings that Cappello lacks the capacity to make decisions regarding his antipsychotic medication, that his medical condition requires antipsychotic medication, and that if Cappello is not treated with antipsychotic medication, it is probable that serious harm to his physical or mental health will result. We therefore affirm the judgment of the trial court.

## II.

### FACTUAL AND PROCEDURAL BACKGROUND

#### A. *Factual background*<sup>1</sup>

On the afternoon of October 1, 2009, Cappello was at Providence Community Services for counseling. Cappello became upset and started to punch a wall. He also made suicidal statements. When an employee asked Cappello to stop punching the wall, Cappello became more upset, yelled at the employee, and punched a glass door with his fist, breaking the door.

San Diego Police Officers Paul Fay and Andrea Furst responded to a call about Cappello. Officer Fay approached Cappello and informed Cappello that he was going to

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<sup>1</sup> We take these facts from the testimony presented at the preliminary hearing since there has been no trial.

take him to a county mental health facility for a mental evaluation. Cappello told Officer Fay that he was not going to go to county mental health, and punched Officer Fay in the mouth several times. Cappello stated that he wanted to go to his cross-dresser's meeting, and he also yelled a number of times, "Just kill me."

Officer Robin Hayes joined Officers Fay and Furst in trying to subdue Cappello. The officers tried to handcuff Cappello, but they were unable to do so. Instead, the officers had to "dog-pile[] on top of him to try and get him into custody." Officer Hayes attempted to hold Cappello's feet down, but Cappello kicked Hayes in the face and chest. Cappello managed to grab an ammunition magazine off of Officer Hayes's belt and yelled, "I've got bullets." While the officers continued to try to handcuff Cappello, he grabbed Officer Furst's gun, at which point Officer Hayes yelled, "He's grabbing your gun."

Officer Fay punched Cappello a number of times in the face to try to distract him.

B. *Procedural background*

Cappello was charged by amended information with three counts of battery on a peace officer causing injury (Pen. Code, § 243, subd. (c)(2); counts 1, 2 and 3); one count of attempting to take a firearm from a police officer (Pen. Code, § 148, subd. (d); count 4); one count of resisting an executive officer (Pen. Code, § 69; count 5); and one count of vandalism (Pen. Code, § 594, subd. (a)(b)(1); count 6).

Cappello entered a plea of not guilty on October 6, 2009. The trial court subsequently ordered a psychiatric examination of Cappello to determine his competency to stand trial, and suspended the proceedings. On January 29, 2010, the trial court held a

hearing on the matter. The court found Cappello not mentally competent to stand trial and ordered that he be committed to Patton State Hospital for a maximum term of three years. The court also authorized the facility to administer antipsychotic medication to Cappello.

Cappello filed a timely notice of appeal challenging the forced medication order on February 18, 2010.

### III.

#### DISCUSSION

In its order committing Cappello to Patton State Hospital, the trial court determined that Cappello was mentally incompetent. The court further found that Cappello "lacks capacity to make a decision regarding antipsychotic medication." The court concluded that Cappello's "mental disorder requires medical treatment with antipsychotic medication, and if [his] mental disorder is not treated with antipsychotic medication, it is possible that serious harm to the physical or mental health of the patient will result."

Cappello contends that there is insufficient evidence to support the trial court's order authorizing the involuntary administration of antipsychotic medication. Cappello asserts that David Naimark, M.D.'s "brief interview" with Cappello was "at best perfunctory," and thus, that Dr. Naimark's opinion does not constitute sufficient evidence to justify a forced medication order. Cappello also contends that Dr. Naimark "never gave appellant a particularized diagnosis" and did not "identify the drugs that would be necessary to be administered." According to Cappello, the fact that Dr. Naimark "left it

to appellant's treating physician to later make [the] call" as to what drugs to administer was "inadequate."

"We review a trial court's order authorizing a state hospital to involuntarily administer antipsychotic medication to defendant for substantial evidence. [Citation.]" (*People v. O'Dell* (2005) 126 Cal.App.4th 562, 570.)

In this case, there is substantial evidence to support the trial court's findings that Cappello lacks the capacity to make a decision regarding antipsychotic medication, that his mental disorder requires antipsychotic medication, and that if Cappello is not treated with antipsychotic medication, it is probable that serious harm to his physical or mental health will result. Valerie Rice, Ph.D., a forensic psychologist, interviewed Cappello and presented a report concerning Cappello's mental competency. According to Dr. Rice, Cappello "presented with an abnormal mental state, characterized by disorganized, rambling speech, and paranoid thoughts." In fact, Dr. Rice found Cappello to be "quite difficult to interview" because "many of his responses . . . were off topic and/or long and rambling." Cappello "often did not answer the question that [Dr. Rice] gave him, but rather responded off topic, going into great detail about irrelevant topics." "He also evidenced a great deal of paranoid thinking, for example, describing what sounded like conspiracies with the police against him." In her opinion, Cappello's "psychiatric symptoms interfered with his ability to participate in the interview," and he "would likely have difficulty cooperating with his legal counsel."

Dr. Naimark, a forensic psychiatrist, issued a report concerning the issue of involuntary medication. In making this report, Dr. Naimark relied on Dr. Rice's

interview and mental status examination of Cappello; the district attorney's file; "[n]umerous psychiatric assessments from San Diego Count Psychiatric Hospital"; and a mental competency report dated October 29, 2009, prepared by Matthew Carroll, M.D. Dr. Naimark was of the opinion that Cappello suffers from a "Psychotic Disorder," based on his "paranoid delusions and disorganized and rambling speech processes."

Dr. Naimark expressed his view that as a result of Cappello's "disorganized thoughts and delusions," as well as his "irritable" affect, Cappello lacked the capacity to make decisions regarding antipsychotic medication. Dr. Naimark was also of the opinion that Cappello's mental disorder requires medical treatment with antipsychotic medication, and that Cappello was suffering adverse effects to his mental and/or physical health.

The trial court acted reasonably in relying on the psychologist and psychiatrist's opinions, and their reports provided substantial evidence to support the court's findings.

Cappello also contends that he was not afforded a full and fair hearing on the question whether he should be medicated, but presents no reasoned argument in support of this contention. On this basis alone, we could reject the contention. However, the record also demonstrates that this argument is without merit. The trial court held a mental competency hearing. Cappello and his attorney were provided the reports regarding his competency and the involuntary medication issue on the day prior to the hearing. At the hearing, Cappello's attorney stated that she had reviewed the reports with Cappello, and that Cappello wanted to "stipulate to the doctor's qualifications and submit on the recommendations." The record thus establishes that Cappello and his attorney chose not to present any evidence or witnesses at the hearing, and that Cappello's counsel

did not request additional time to review the reports or have an expert conduct an independent evaluation of Cappello. We therefore reject Cappello's cursory argument that he was not provided a full and fair hearing on the issue of the forced medication.

IV.

DISPOSITION

The judgment of the trial court is affirmed.

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AARON, J.

WE CONCUR:

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BENKE, Acting P. J.

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McINTYRE, J.